Supreme Court, U.S.
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No. 96-909 (2)

In The

Supreme Court of the United States

October Term, 1996

VERA ARMSTRONG CHERRY,

Plaintiff, Appellant,

vs.

ROCKING HORSE RIDGE ESTATES ASSOCIATION, INC., et al.,

Defendant, Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeal For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. WHETHER GROUNDS EXIST FOR GRANTING THE PETITION.

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I. STATEMENT OF THE CASE[1]

This petition is taken from a final judgment disposing of all issues between the parties. The petition is essentially concerned with the United States District Court's Order granting summary judgment on November 14, 1994 in favor of respondent.

On October 6, 1993, petitioner commenced a civil rights action which included allegations for conspiracy, denial of due process and violation of petitioner's freedom of expression.

After several amendments to petitioner's original complaint, motions for summary judgment were filed by several defendants. An Order granting summary judgment in favor of this respondent was entered on November 14, 1994. Petitioner subsequent appealed her action to the United States Court of Appeals for the Ninth Circuit which affirmed the decision of the District Court on or about June 14, 1996. The reason for the delay in adjudicating this case was, in part, because Respondent, County of Orange, was in bankruptcy for approximately 18 months, beginning on or about December 6, 1994.

The substance of petitioner's petition here, in her attempt to seek this court's recognition and review, is based on the same procedural and substantive arguments previously made to the United States District Court and subsequently to the United States Court of Appeals for the Ninth Circuit. Simply, these arguments are not a basis for granting a Petition for Writ of Certiorari.

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[1] Respondent accepts petitioner's statement of jurisdiction.

II. SUMMARY OF ARGUMENT

Petitioner sought federal law affirmation pursuant to her appeal. However, as she has done continuously, petitioner fails to acknowledge the fact that there was sufficient cause to institutionalize her merely as a result of the behavior she exhibited in front of several individuals, including Dr. Jose Flores-Lopez, Carol Lipinski, Sheri Blanchard, and her own son, Frank Armstrong. With the exception of Mr. Armstrong, Ms. Lipinski was a close friend of petitioner's and Dr. Flores-Lopez and Ms. Blanchard were both highly-trained mental health specialists.

Accordingly, where observations of strange behavior provides an objectively reasonable basis for a commitment, the hospitalization of a plaintiff is proper. *Glass v. Mayas*, 984 F.3d 55, 57 (2nd Cir. 1993).

Thus, petitioner's initial argument based on hearsay, although itself deficient, was unnecessary in deciding summary adjudication in favor of respondent by the District Court.

Petitioner's second argument, on page 10 of her petition, rests solely on the position that the deposition of Dr. Jose Flores-Lopez was at all times " . . . honest, direct, forthright in all his answers and he was ably and competently assisted by the attorneys, Lynberg & Watkins, the attorneys of record for Defendant, County of Orange." (Please see Petitioner's Petition for Writ of Certiorari, hereinafter "Writ", at page 11: paragraph 3). Petitioner somehow ties this into a conspiratorial argument and the violation of policy, practice or custom.

Once again, there are many reasons for stating that this is an unwarranted position for purposes of deciding whether to grant Petitioner's Petition. However, the most obvious is that without a substantive civil rights violation, there can be no claim of a violation of a policy, practice and/or custom pursuant to *Monnell v. New York City Department of Social Services*, 436 U.S. 658 (1978). There must be a particular policy which is a "moving force" or an "affirmative link" with a constitutional violation. *City of Oklahoma City v. Tuttle*, 472 U.S. 808 (1985). There simply is no constitutional deprivation in this case.

Finally, petitioner's third argument references the administration of certain drugs during petitioner's hospitalization. As there was probable cause to institutionalize the petitioner pursuant to California Welfare & Institutions Code § 5150, there can be no doubt that there was an additional need to treat her pursuant to that institutionalization. Petitioner has done nothing at the trial court level or in her appellate papers, which would change this simple fact and/or go toward establishing a conspiracy of any kind between the numerous respondents. The probable cause for commitment outlined in the record quickly dissipates any notion of a conspiracy. As set forth in the District Court's opinion "County cannot be held liable for wrongful detention, as there was probable cause for that detention." (E.R. 307:5vii).

III. REASON FOR DENYING THE PETITION

The petition itself demonstrates the reasons for denial. Petitioner's circuitous argument relies not on contentions of behavior which was normal, but rather on

allegations that the support for her institutionalization was a result of hearsay. A review of the record quickly reveals an opposite finding. There was, in effect, probable cause for her commitment. Accordingly, based on undisputed personal observations of several witnesses who were in direct contact with petitioner both before and immediately after her commitment, it cannot be logically controverted that hearsay played any part in her hospitalization.

This petition arises not out of concerns for federalism, but rather out of the specific incidents of pain and suffering of an individual. Petitioner has asked this court to review this case because the Court of Appeals for the Ninth Circuit ruled that "summary judgment for all parties was appropriate and affirmed". (Writ at page 5: paragraph 4). This innocuous argument is clearly not worthy of further review here or elsewhere.

IV. CONCLUSION

For reasons already made clear, summary remand is not applicable here.

A simple reading of Petitioner's Writ sadly exhibits voluminous re-citations of legal procedure as well as

specific incidents of pain and suffering without the necessary nexus of sound jurisprudence.

DATED: December 23, 1996 Respectfully Submitted

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